

**ASSEMBLY BILL**

**No. 674**

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**Introduced by Assembly Member Salas**

February 25, 2009

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An act to add Chapter 2.97 (commencing with Section 1001.91) to Title 6 of Part 2 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 674, as introduced, Salas. Criminal procedure: veterans.

Existing law establishes various diversion and deferred entry of judgment programs for, among other things, substance abuse treatment. Existing provisions of the California Constitution require a  $\frac{2}{3}$  vote of the membership of each house of the Legislature for a bill that would exclude relevant evidence in a criminal proceeding.

This bill would establish a deferred entry of judgment program and a preconviction drug diversion program for veterans, as specified, who suffer from post-traumatic stress disorder or traumatic brain injury, as specified, and who commit specified offenses. Because this program would provide for the exclusion of certain urine analysis results and statements of program participants from criminal proceedings, the bill would require a  $\frac{2}{3}$  vote.

By imposing additional burdens on local government entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 2.97 (commencing with Section 1001.91)  
2 is added to Title 6 of Part 2 of the Penal Code, to read:

3  
4 CHAPTER 2.97. SPECIAL PROCEEDINGS IN CASES INVOLVING  
5 VETERANS  
6

7 1001.91. (a) Except as otherwise required by the Substance  
8 Abuse and Crime Prevention Act of 2000, this chapter shall apply  
9 whenever a case is before any court upon an accusatory pleading  
10 charging the defendant with a misdemeanor or felony and the  
11 defendant is a veteran, as defined in Section 980 of the Military  
12 and Veterans Code, who has been diagnosed with service connected  
13 post-traumatic stress disorder or traumatic brain injury as a result  
14 of his or her military service or who has undiagnosed symptoms  
15 of post-traumatic stress disorder or traumatic brain injury as a  
16 result of stressors that he or she was exposed to in a combat  
17 situation in the military service as proven by his or her service  
18 record that includes the veteran's service form DD214 (Certificate  
19 of Release or Discharge from Active Duty) with Combat Infantry  
20 Badge, Combat Action Ribbon, Purple Heart, Bronze Star, or any  
21 decoration with a "V" for valor, Silver Star, Distinguished Service  
22 Medal, Navy Cross, Distinguished Flying Cross, or Congressional  
23 Medal of Honor and all of the following apply:

24 (1) The offense charged did not involve a crime of violence or  
25 threatened violence.

26 (2) The crime charged is not a serious felony as defined in  
27 Section 1192.7 or 1192.8 and is not a violent felony as listed in  
28 subdivision (c) of Section 667.5.

29 (3) The defendant's record does not indicate that probation or  
30 parole has ever been revoked without thereafter being completed.

31 (4) The defendant's record does not indicate that he or she has  
32 successfully completed or been terminated from diversion or

1 deferred entry of judgment pursuant to this chapter within five  
2 years prior to the alleged commission of the charged offense.

3 (5) The defendant has no prior felony conviction within five  
4 years prior to the alleged commission of the charged offense.

5 (b) The prosecuting attorney shall review his or her file to  
6 determine whether or not paragraphs (1) to (5), inclusive, of  
7 subdivision (a) apply to the defendant. Upon the agreement of the  
8 prosecuting attorney, law enforcement, the public defender, and  
9 the presiding judge of the criminal division of the superior court  
10 or a judge designated by the presiding judge, this procedure shall  
11 be completed as soon as possible after the initial filing of the  
12 charges. If the defendant is found eligible, the prosecuting attorney  
13 shall file with the court a declaration in writing or state for the  
14 record the grounds upon which the determination is based, and  
15 shall make this information available to the defendant and his or  
16 her attorney. This procedure is intended to allow the court to set  
17 the hearing for deferred entry of judgment at the arraignment. If  
18 the defendant is found ineligible for deferred entry of judgment,  
19 the prosecuting attorney shall file with the court a declaration in  
20 writing or state for the record the grounds upon which the  
21 determination is based, and shall make this information available  
22 to the defendant and his or her attorney. The sole remedy of a  
23 defendant who is found ineligible for deferred entry of judgment  
24 is a postconviction appeal.

25 (c) All referrals for deferred entry of judgment granted by the  
26 court pursuant to this chapter shall be made only to programs that  
27 have been certified by the county veterans service officer, or other  
28 appropriate officer designated by the county pursuant to this  
29 section, or to programs that provide services at no cost to the  
30 participant and have been deemed by the court and the county to  
31 be credible and effective. The defendant may request to be referred  
32 to a program in any county, as long as that program meets the  
33 criteria set forth in this subdivision.

34 (d) Any defendant who is participating in a program referred  
35 to in this section may be required to undergo analysis of his or her  
36 urine for the purpose of testing for the presence of any drug or  
37 alcohol as part of the program. However, urine analysis results  
38 shall not be admissible as a basis for any new criminal prosecution  
39 or proceeding.

1 1001.92. (a) If the prosecuting attorney determines that this  
2 chapter may be applicable to the defendant, he or she shall advise  
3 the defendant and his or her attorney in writing of that  
4 determination. This notification shall include the following:

5 (1) A full description of the procedures for deferred entry of  
6 judgment.

7 (2) A general explanation of the roles and authorities of the  
8 probation department, the prosecuting attorney, the program, and  
9 the court in the process.

10 (3) A clear statement that in lieu of trial, the court may grant  
11 deferred entry of judgment with respect to any crime specified in  
12 subdivision (a) of Section 1001.91 that is charged, provided that  
13 the defendant pleads guilty to each charge and waives time for the  
14 pronouncement of judgment, and that upon the defendant's  
15 successful completion of a program, as specified in subdivision  
16 (c) of Section 1001.91, the positive recommendation of the program  
17 authority and the motion of the prosecuting attorney, the court, or  
18 the probation department, but no sooner than 18 months and no  
19 later than three years from the date of the defendant's referral to  
20 the program, the court shall dismiss the charge or charges against  
21 the defendant.

22 (4) A clear statement that upon any failure of treatment or  
23 condition under the program, or any circumstance specified in  
24 Section 1001.94, the prosecuting attorney, the probation  
25 department, or the court on its own may make a motion to the court  
26 for entry of judgment and the court shall render a finding of guilt  
27 to the charge or charges pled, enter judgment, and schedule a  
28 sentencing hearing as otherwise provided in this chapter.

29 (5) An explanation of criminal record retention and disposition  
30 resulting from participation in the deferred entry of judgment  
31 program and the defendant's rights relative to answering questions  
32 about his or her arrest and deferred entry of judgment following  
33 successful completion of the program.

34 (b) If the defendant consents and waives his or her right to a  
35 speedy trial or a speedy preliminary hearing, the court may refer  
36 the case to the probation department or the court may summarily  
37 grant deferred entry of judgment if the defendant pleads guilty to  
38 the charge or charges and waives time for the pronouncement of  
39 judgment. When directed by the court, the probation department  
40 shall make an investigation and take into consideration the

1 defendant's age, employment and service records, educational  
2 background, community and family ties, prior controlled substance  
3 use, prior use of alcoholic beverages, homelessness, treatment  
4 history, if any, demonstrable motivation, and other mitigating  
5 factors in determining whether the defendant is a person who would  
6 be benefited by education, treatment, or rehabilitation. The  
7 probation department shall also determine which programs the  
8 defendant would benefit from and which programs would accept  
9 the defendant. The probation department shall report its findings  
10 and recommendations to the court. The court shall make the final  
11 determination regarding education, treatment, or rehabilitation for  
12 the defendant. If the court determines that it is appropriate, the  
13 court shall grant deferred entry of judgment if the defendant pleads  
14 guilty to the charge or charges and waives time for the  
15 pronouncement of judgment.

16 (c) No statement, or any information procured therefrom, made  
17 by the defendant to any probation officer, drug or treatment  
18 program worker, county veterans service officer, or other assigned  
19 county employee that is made during the course of any  
20 investigation conducted by the probation department or treatment  
21 program pursuant to subdivision (b), and prior to the reporting of  
22 the probation department's findings and recommendations to the  
23 court, shall be admissible in any action or proceeding brought  
24 subsequent to the investigation.

25 No statement, or any information procured therefrom, with  
26 respect to the specific offense with which the defendant is charged,  
27 that is made to any probation officer, drug or treatment program  
28 worker, county veterans service officer, or other assigned county  
29 employee subsequent to the granting of deferred entry of judgment,  
30 shall be admissible in any action or proceeding, including a  
31 sentencing hearing.

32 (d) A defendant's plea of guilty pursuant to this chapter shall  
33 not constitute a conviction for any purpose unless a judgment of  
34 guilty is entered pursuant to Section 1001.94.

35 1001.93. (a) The court shall hold a hearing and, after  
36 consideration of any information relevant to its decision, shall  
37 determine if the defendant consents to further proceedings under  
38 this chapter and if the defendant should be granted deferred entry  
39 of judgment. If the court does not deem the defendant a person  
40 who would be benefited by deferred entry of judgment, or if the

1 defendant does not consent to participate, the proceedings shall  
2 continue as in any other case.

3 (b) At the time that deferred entry of judgment is granted, any  
4 bail bond or undertaking, or deposit in lieu thereof, on file by or  
5 on behalf of the defendant shall be exonerated, and the court shall  
6 enter an order so directing.

7 (c) The period during which deferred entry of judgment is  
8 granted shall be for no less than 18 months and no longer than  
9 three years. Progress reports shall be filed by the probation  
10 department with the court as directed by the court.

11 1001.94. (a) If it appears to the prosecuting attorney, the court,  
12 or the probation department that the defendant is performing  
13 unsatisfactorily in the assigned program, is not benefiting from  
14 education, treatment, or rehabilitation, is convicted of a  
15 misdemeanor that reflects the defendant's propensity for violence,  
16 is convicted of a felony, or has engaged in criminal conduct  
17 rendering him or her unsuitable for deferred entry of judgment,  
18 the prosecuting attorney, the court on its own, or the probation  
19 department may make a motion for entry of judgment. After notice  
20 to the defendant, the court shall hold a hearing to determine  
21 whether judgment should be entered.

22 (b) If the court finds that the defendant is not performing  
23 satisfactorily in the assigned program, is not benefiting from  
24 education, treatment, or rehabilitation, has been convicted of a  
25 crime as indicated above, or has engaged in criminal conduct  
26 rendering him or her unsuitable for deferred entry of judgment,  
27 the court shall render a finding of guilt to the charge or charges  
28 pled, enter judgment, and schedule a sentencing hearing as  
29 otherwise provided in this chapter.

30 (c) If the defendant has performed satisfactorily during the  
31 period in which deferred entry of judgment was granted, at the end  
32 of that period, the criminal charge or charges shall be dismissed.  
33 Prior to dismissing the charge or charges or rendering a finding of  
34 guilt and entering judgment, the court shall consider the defendant's  
35 ability to pay and whether the defendant has paid a diversion  
36 restitution fee pursuant to Section 1001.90, if ordered, and has met  
37 his or her financial obligation to the program, if any. As provided  
38 in Section 1203.1b, the defendant shall reimburse the probation  
39 department for the reasonable cost of any program investigation

1 or progress report filed with the court as directed pursuant to  
2 Sections 1001.91 and 1001.92.

3 1001.95. (a) Any record filed with the Department of Justice  
4 shall indicate the disposition in those cases deferred pursuant to  
5 this chapter. Upon successful completion of a deferred entry of  
6 judgment program, the arrest upon which the judgment was  
7 deferred shall be deemed to have never occurred. The defendant  
8 may indicate in response to any question concerning his or her  
9 prior criminal record that he or she was not arrested or granted  
10 deferred entry of judgment for the offense, except as specified in  
11 subdivision (b). A record pertaining to an arrest resulting in  
12 successful completion of a deferred entry of judgment program  
13 shall not, without the defendant's consent, be used in any way that  
14 could result in the denial of any employment, benefit, license, or  
15 certificate.

16 (b) The defendant shall be advised that, regardless of his or her  
17 successful completion of the deferred entry of judgment program,  
18 the arrest upon which the judgment was deferred may be disclosed  
19 by the Department of Justice in response to any peace officer  
20 application request and that, notwithstanding subdivision (a), this  
21 section does not relieve him or her of the obligation to disclose  
22 the arrest in response to any direct question contained in any  
23 questionnaire or application for a position as a peace officer, as  
24 defined in Section 830.

25 1001.96. (a) Except as otherwise required by the Substance  
26 Abuse and Crime Prevention Act of 2000, the presiding judge of  
27 the superior court, or a judge designated by the presiding judge,  
28 together with the district attorney and the public defender, may  
29 agree in writing to establish and conduct a preguilty plea drug  
30 court program pursuant to the provisions of this chapter, wherein  
31 criminal proceedings are suspended without a plea of guilty for  
32 designated defendants. The drug court program shall include a  
33 regimen of graduated sanctions and rewards, individual and group  
34 therapy, urine analysis testing commensurate with treatment needs,  
35 close court monitoring and supervision of progress, educational  
36 or vocational counseling as appropriate, and other requirements  
37 as agreed to by the presiding judge or his or her designee, the  
38 district attorney, and the public defender. If there is no agreement  
39 in writing for a preguilty plea program by the presiding judge or  
40 his or her designee, the district attorney, and the public defender,

1 the program shall be operated as a deferred entry of judgment  
2 program as provided in this chapter.

3 (b) The provisions of Sections 1001.94 and 1001.95 regarding  
4 satisfactory and unsatisfactory performance in a program shall  
5 apply to preguilty plea programs. If the court finds that the  
6 defendant is not performing satisfactorily in the assigned program,  
7 is not benefiting from education, treatment, or rehabilitation, has  
8 been convicted of a crime specified in Section 1000.3, or has  
9 engaged in criminal conduct rendering him or her unsuitable for  
10 the preguilty plea program, the court shall reinstate the criminal  
11 charge or charges. If the defendant has performed satisfactorily  
12 during the period of the preguilty plea program, at the end of that  
13 period, the criminal charge or charges shall be dismissed and the  
14 provisions of Section 1001.95 shall apply.

15 SEC. 2. If the Commission on State Mandates determines that  
16 this act contains costs mandated by the state, reimbursement to  
17 local agencies and school districts for those costs shall be made  
18 pursuant to Part 7 (commencing with Section 17500) of Division  
19 4 of Title 2 of the Government Code.

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22 **CORRECTIONS:**

23 **Digest—Page 1.**

24 **Text—Page 2.**  
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